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October 11, 2016

Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street SW
Washington, DC 20554

**RE: *Protecting the Privacy of Customers of Broadband, WC Docket No. 16-106*
Business Data Services, WC Docket No. 16-143
*Special Access Rates, WC Docket No. 05-25***

Dear Ms. Dortch:

On Thursday, October 6th,¹ I met with Commissioner Jessica Rosenworcel and Travis Litman, her Senior Legal Advisor, to discuss matters in the above-captioned dockets. The substance of my presentations that day derived from two filings that Free Press submitted or joined last week, both of which are included as attachments hereto.

On broadband privacy, I responded to arguments recently made by Google² (as well as other companies and trade associations) that call for complicated and unworkable rules singling out only “sensitive” data and content for sufficient protection.³ Free Press and other privacy advocates have consistently explained how such impracticable schemes contravene the clear statutory mandate in Section 222, which requires telecommunications carriers to protect all of their customers’ proprietary information.

The Commission thus must reject these calls for broadband customers to receive less protection if and when the broadband provider arrogates to itself the power to deem certain types of content “non-sensitive.” Google suggests that the FCC promulgate a rule allowing ISPs first to retain all of their customers’ web-browsing history and then comb through it to determine what the ISP considers sensitive. As Free Press has explained on many occasions, this is nothing less than letting carriers read their customers’ messages first before deciding whether those messages were really too private to be read.

¹ This *ex parte* notification is timely filed, pursuant to 47 C.F.R. §§ 1.4(e) and 1.1206(b)(2)(iii), owing to the federal holiday observed on Monday, October 10, 2016.

² Google Letter to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 16-106 (filed Oct. 3, 2016).

³ Free Press Letter to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 16-106 (filed Oct. 7, 2016).

I also noted that the Commission does not have the luxury of deciding to refrain from implementation of the statute in order to harmonize its rules with the approaches heretofore taken by the Federal Trade Commission. While both agencies may indeed have some role in overseeing components of what industry spokespeople euphemistically call the “internet ecosystem,” the two commissions have different authorizing statutes, different jurisdictions, and different powers granted them by Congress to effectuate their respective mandates.

For all these reasons – to say nothing of the need for increased privacy protections and policies that empower internet users – the Federal Communications Commission must move ahead and adopt strong privacy rules in this proceeding. It cannot and should not freeze in place, sitting out the chance to fulfill its current responsibilities while awaiting some hypothetical enactment by a future Congress. Nor should it heed unsupported and false claims that privacy rules for broadband providers are (simultaneously, yet paradoxically) too complicated for internet users to understand, too strong for internet advertisers and innovators to flourish, and too weak to offer users real protection. These self-contradictory arguments do nothing to reduce the FCC’s congressional authority, or the urgent need for the FCC to act now within the scope of that authority.

Turning to the Business Data Services proceeding, I briefly summarized the positions articulated by Free Press and eleven other signatories to an October 4th letter filed in WC Docket Nos. 16-143 and 05-25.⁴ As that filing made clear, the voluminous record in these proceedings “clearly demonstrates that incumbents are exercising market power by charging unreasonably high prices for packet-based business data services such as Ethernet, as well as legacy services, such as DS1 and DS3 services.”⁵

As a result, Free Press and the other organizations and associations signing that letter urged the Commission “to ensure that comprehensive reform applies to both legacy TDM services and to more advanced Ethernet services that are used by millions of consumers, businesses, and anchor institutions every day.”⁶ Unfortunately, the preliminary summary of Chairman Wheeler’s proposed final rules (released last Friday) suggests that the Commission might fail in its mission to regulate such non-competitive packet-based BDS services – opting instead for continued monitoring alone, while kicking the can down the road once more in this decade-plus proceeding.

Respectfully submitted,

Matthew F. Wood
Policy Director
Free Press

⁴ Benton Foundation *et al.* Letter to Chairman Tom Wheeler, WC Docket Nos. 16-143, 05-25 (filed Oct. 4, 2016).

⁵ *Id.* at 1.

⁶ *Id.* at 3.